

STANDARD AGREEMENT AMENDMENT

STD. 213 A (Rev 6/03)

☐ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 1 Pages

AGREEMENT NUMBER

4600000634

REGISTRATION NUMBER

AMENDMENT NUMBER

1

1. This Agreement is entered into between the State Agency and Contractor named below:

STATE AGENCY'S NAME

Department of Water Resources

CONTRACTOR'S NAME

U.S. Bureau of Reclamation, Department of Fish and Game, and Suisun Resource Conservation District

2. The term of this

Agreement is March 2, 1987 through In perpetuity

3. The maximum amount of this \$In perpetuity

Agreement after this amendment is:

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

1. To revise the Scope of Work to reflect significant events and changed conditions that have occurred since the original Agreement was signed. Exhibit A, Revised Suisun Marsh Mitigation Agreement including attachments, are attached and made a part of this Agreement by this reference.
2. To add Exhibit B with budget detail language. Exhibit B, Budget Detail and Payment Provisions, is attached and made a part of this Agreement by this reference.
3. To add Exhibit C, General Terms and Conditions applicable to SRCD, which is attached and made a part of this Agreement by this reference.
4. To add Exhibit CI, Special Terms and Conditions for the Department of Water Resources applicable to SRCD as a local public entity, which is attached and made a part of this Agreement by this reference.
5. To add Exhibit D, General Terms and Conditions for Interagency Agreements applicable to DFG, which is attached and made a part of this Agreement by this reference.
6. To add Exhibit D1, Special Terms and Conditions for the Department of Water Resources applicable to DFG, which is attached and made a part of this Agreement by this reference.
7. To add Exhibit E, Special Terms and Conditions for the Department of Water Resources applicable to the U.S. Bureau of Reclamation, which is attached and made a part of this Agreement by this reference.
8. To add Exhibit F, Standard Contract Provisions Regarding Political Reform Act Compliance, which is attached and made a part of this Agreement by this reference.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

See Signature Page 11

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

STATE OF CALIFORNIA

AGENCY NAME

See Signature Page

BY (Authorized Signature)

[Signature]

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS

CALIFORNIA

Department of General Services
Use Only

Kay

APPROVED

JUN 20 2005

DEPT OF GENERAL SERVICES

Day

☐ Exempt per:

EXHIBIT A

REVISED SUISUN MARSH MITIGATION AGREEMENT

REVISED SUISUN MARSH MITIGATION AGREEMENT

Among

**United States Bureau of Reclamation
California Department of Water Resources
California Department of Fish and Game
Suisun Resource Conservation District**

VERSION DATED
June 20, 2005

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ATTACHMENTS

The following attachments are made a part of this Revised Mitigation Agreement by reference:

A. Original Suisun Marsh Mitigation Agreement

REVISED SUISUN MARSH MITIGATION AGREEMENT

Among
United States Bureau of Reclamation,
California Department of Water Resources,
California Department of Fish and Game, and
Suisun Resource Conservation District

THIS REVISED SUISUN MARSH MITIGATION AGREEMENT ("Revised Mitigation Agreement") is made this 20th day of June, 2005, among the United States Bureau of Reclamation ("USBR"), California Department of Water Resources ("DWR"), California Department of Fish and Game ("DFG"), and the Suisun Resource Conservation District ("SRCD") (hereinafter referred to collectively as the "Parties").

The Original Mitigation Agreement (Attachment A) was entered into on the 2nd day of March, 1987, among USBR, DWR, and DFG. This Revised Mitigation Agreement replaces the Original Mitigation Agreement.

RECITALS

The Original Mitigation Agreement stated that waterfowl habitat in the Suisun Marsh would be: (1) lost due to the construction of facilities in accordance with the Suisun Marsh Preservation Agreement among DWR, USBR, DFG and SRCD dated March 2, 1987 ("SMPA"), and (2) degraded by the impacts of the Central Valley Project ("CVP"), the State Water Project ("SWP"), and other upstream diverters on the Channel Islands (Roe, Ryer, Freeman, and Snag). The parties to the Original Mitigation Agreement were willing to provide for the acquisition, development, operation and maintenance of mitigation lands in accordance with the terms and conditions set forth in the Original Mitigation Agreement to offset such losses and degradation.

The Parties hereto are willing to provide the wetlands mitigation and conservation as specified in this Revised Mitigation Agreement and in accordance with applicable U.S. Army Corps of Engineers ("USACE") permits and biological opinions required for activities in the Marsh. The mitigation and conservation will provide multi-species habitat benefits.

NOW, THEREFORE, in consideration of the mutual obligations in the Revised Mitigation Agreement, the Parties agree as follows:

REVISED MITIGATION AGREEMENT

Article I. Definitions

When used herein, the term:

- A. "Mitigation and Conservation Lands" shall mean those lands that have been and are to be acquired, developed, operated and maintained by Parties to this Revised Mitigation Agreement as assigned to offset the loss and degradation of aquatic and terrestrial habitat supporting resident native species, including threatened and endangered species, and Pacific Flyway waterfowl species resulting from the construction and operation of facilities in accordance with the SMPA and its amendments and impacts of the CVP, the SWP, and other upstream diverters on the Channel Islands and to contribute to the conservation of those aquatic and terrestrial habitats.
- B. "Parties" shall mean the U.S. Bureau of Reclamation, California Department of Water Resources, California Department of Fish and Game, and Suisun Resource Conservation District.
- C. "Revised Suisun Marsh Preservation Agreement" ("Revised SMPA") shall mean that agreement dated June 20, 2005, among USBR, DWR, DFG, and SRCD or as it may be amended.
- D. "Suisun Marsh Preservation Agreement" ("SMPA") shall mean that agreement dated March 2, 1987, among USBR, DWR, DFG, and SRCD.
- E. "SMPA Coordination Committee" shall mean the SMPA Coordination Committee as defined in Article XII of the Revised SMPA.
- F. "SMPA ECAT" shall mean the SMPA Environmental Coordination Advisory Team as defined in Article XII of the Revised SMPA.

Article II. Mitigation and Conservation Lands and Funding

A. Original Mitigation Agreement

Table 1 lists the acreage requirements of mitigation lands set forth in the Original Mitigation Agreement and projected mitigation funds.

Table 1

Phases of Acquisition and Development	Mitigation Lands (Acres)	Estimated Costs of Mitigation Lands (July 1985 dollars)	
		Acquisition & Development ^{1/} <u>(x \$1000)</u>	Operation & Maintenance ^{2/} <u>(x \$1000)</u>
<u>Phase A</u>			
Initial Facilities (Roaring River Unit, Morrow Island Ditch, and Goodyear Slough Outfall) Montezuma Slough Control Structure One-half Channel Islands	354	2,478	885
<u>Phase B</u>			
Boynton-Cordelia Unit	47	329	118
Cordelia-Goodyear Unit	44	308	110
Grizzly Island Unit	172	1,204	430
Potrero Hills Unit	49	343	122
<u>Phase C</u>			
Other one-half of Channel Islands	<u>227</u>	<u>1,589</u>	<u>568</u>
TOTAL	893	6,251	2,233

^{1/} Acquisition and Development costs are based on \$7,000 per acre.

^{2/} Operation and Maintenance costs are based on \$2,500 per acre.

The Conservation Measures in the 1981 biological opinion (Service file 1-1-81-F-130) issued by the U.S. Fish and Wildlife Service ("FWS") to USBR and embedded in DWR's permit (16223E58) from the USACE, stated "a goal of these measures is to retain at least 2,500 acres of preferred salt marsh harvest mouse habitat adequately distributed throughout the marsh...". As of April 2004, approximately 2,430 acres have been set aside as conservation areas for the salt marsh harvest mouse. The management and maintenance of these areas together with the acquisition, tidal restoration, and maintenance of approximately 70 additional acres will complete the goal of 2,500 acres of preferred salt marsh harvest mouse habitat.

The Original Mitigation Agreement stated that prior to commencement of construction of the Suisun Marsh Salinity Control Gates (SMSCG) formerly known as the Montezuma Slough Control Structure, DWR was to pay DFG for costs of mitigation lands set forth for Phase I in Table 1 of the Original Mitigation Agreement. A total of \$2,528,571 was paid in two installments (August 1987 and May 1988) to meet the acquisition and development portion of this obligation. This obligation was fulfilled in 1998 with the acquisition and development of the Island Slough Unit, a 354 acre parcel in Suisun Marsh. One hundred acres of the Island Slough Unit were developed, and are operated and maintained as habitat for the salt marsh harvest mouse to comply with the 1981 FWS biological opinion, and to fulfill the Phase A mitigation obligation.

DFG is responsible for continued operation and maintenance of the Island Slough Unit, with a total of \$1,053,150, paid in July 1988 by DWR to fulfill the operation and maintenance ("O&M") portion of this obligation. Any future O&M costs are the sole responsibility of DFG.

As a result of the 1994 Bay-Delta Accord, including enhanced outflow requirements for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, and associated success of the SMSCG in providing greater protection of water quality in the Marsh than originally anticipated, the SMPA agencies agreed that the facilities of Phase B were no longer necessary. The Demonstration Document¹, prepared by DWR in support of the 1998 State Water Resources Control Board Water Rights hearings documented these findings.

Phase C of the Original Mitigation Agreement was a deferred payment for the remaining one-half of the impacts on the Channel Islands (the other half fulfilled in Phase A) as described in the *Plan of Protection for the Suisun Marsh including Environmental Impact Report*². These impacts were identified in 1987 to be 227 acres. A total of \$2,157,000 (1985 dollars) was specified in the 1987 agreement to meet this obligation. This total was adjusted according to the indices specified in the Original Mitigation Agreement. In January 2000, DWR paid a total of \$3,265,562 to the DFG to fulfill the Phase C funding requirement. Those funds included \$2,377,474 for Acquisition and Development and \$888, 088 for O&M.

B. Revised Mitigation Agreement

This Revised Mitigation Agreement removes the requirements of Phase B funds as shown in Table 1 of the Original Mitigation Agreement, since the Phase B facilities are no longer required to meet the original objectives and will not be constructed in the Marsh.

¹ Department of Water Resources. 1998. Demonstration Document: Suisun Marsh Preservation Agreement Amendment Three Actions as a Means to Provide Equivalent or Better Protection than Channel Water Salinity Standards at Suisun Marsh Stations S-35 and S-97. Sacramento, CA. 55 pp. plus appendices.

² Department of Water Resources. 1984. Plan of Protection for the Suisun Marsh including Environmental Impact Report. Sacramento, CA. 176 pp. plus appendices.

Phase C funds will be used to acquire and conserve habitat for multi-species benefits to complete the conservation measures of the 1981 FWS biological opinion and to contribute to the conservation of aquatic and terrestrial habitats in the Suisun Marsh. This use replaces the original intent to acquire, restore and manage 227 acres for seasonal wetland mitigation.

Table 2 lists the current funding allocations agreed to by the Parties to this Revised Mitigation Agreement. The balance of Phase C funds not specifically allocated in Table 2 totals \$2,028,812.

It is the intent of the SMPA Agencies that Phase C funds will be used to fulfill the obligations under the 1981 FWS biological opinion, including long-term O&M of conservation lands. Any funds not used for these purposes may be used for additional activities such as improvement of managed wetlands; leverage funds for additional tidal restoration; and conservation or managed wetland enhancement proposals, including but not limited to future phases of CALFED Grant ERP 01-C04 "Suisun Marsh Property Acquisition and Habitat Restoration" and Phase III Hill Slough West. Allocation of any Phase C funds for such additional activities is subject to approval by the SMPA Agencies.

Table 2

<u>Project Type</u>	<u>Project</u>	<u>Phase C Fund Allocation</u>
Tidal Restoration Acquisition and Development	Blacklock (70 acres) Phases I and II	\$536,750
	Blacklock Cross Levee Construction	\$100,000
	Meins Landing Acquisition	\$300,000
Operation and Maintenance	Blacklock Cross Levee Maintenance	\$100,000
	Lower Joice Island Invasive Species Control (230 acres)	\$50,000
	Conservation Area Emergency Reserve	<u>\$150,000</u>
TOTAL		\$1,186,750

Article III. Miscellaneous Provisions

- A. Through this amendment, the Parties agree that the SMPA Environmental Coordination Advisory Team ("SMPA ECAT") established in 1988, will review and recommend as necessary, actions and operations pursuant to the fulfillment of this agreement including recommendations for use of the Phase C funds. SMPA ECAT will review potential properties and make recommendations for acquisitions to the SMPA Coordination Committee.
- B. DFG in cooperation with DWR, USBR, and SRCD shall develop mitigation and conservation lands as cost effectively as possible. Any future O&M costs of mitigation and/or conservation lands acquired to meet the requirements under this Revised Mitigation Agreement shall be the sole responsibility of DFG in perpetuity.

Article IV. Cost Sharing and Payment

- A. All costs incurred to continue to implement this Agreement beyond March 2, 2037 (50 years from the effective date of the Original Mitigation Agreement shall be the sole responsibility of DFG.
- B. USBR shall pay Forty Percent (40%) and DWR shall pay Sixty Percent (60%) of the costs assigned to DWR and USBR pursuant to Article II of this Revised Mitigation Agreement. DWR has paid to DFG One Hundred Percent (100%) of the implementing costs as specified in Article II. USBR has paid to DWR the USBR's Forty Percent (40%) share of the implementing costs, as determined to be allowable by the Contracting Officer in accordance with the terms of this Revised Mitigation Agreement and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 6, 48 CFR Sections 31.601-31.603. If any funds paid to DFG pursuant to this Revised Mitigation Agreement are not used in accordance with this Revised Mitigation Agreement or not in compliance with FAR Part 31, Subpart 31.6, DFG shall reimburse USBR and DWR for the amount of any such improperly used funds.
- C. The term "costs" shall include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR which may be incurred by DWR in performance of the obligations under this Revised Mitigation Agreement.
- D. Each year on or before October 1, DWR shall, to the extent possible, provide USBR a proposed three-year Suisun Marsh budget reflecting DWR's estimated annual costs for three years beginning one year after the date of submittal to implement the activities under Article II of this Revised Mitigation Agreement. This estimated budget will be used by USBR to estimate future funding requirements for costs associated with this Revised Mitigation Agreement. USBR shall notify DWR by the following September 15 of its full or partial approval of DWR's proposed budget for year one, including any rationale for unapproved costs. USBR's approval shall not

be unreasonably withheld. In the event that USBR does not approve DWR's year one budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually agreed upon by DWR and USBR. DWR and USBR shall coordinate on estimated budgets for years two and three as needed for their respective budget planning purposes.

- E. Separate cost accounts shall be maintained by physical feature or descriptive title to permit ready audit.

Article V. Amendment

This Revised Mitigation Agreement may be amended at any time by mutual written agreement of USBR, DWR, SRCD, and DFG and approval by the California Department of General Services. No alterations or variation of the terms of this Revised Mitigation Agreement shall be valid unless made in writing and signed by the Parties, and no oral understanding or agreement not incorporated in this Revised Mitigation Agreement shall be binding on any of the Parties.

Article VI. Notices

All notices that are required either expressly or by implication to be given by one Party to another shall be in writing and deemed to be given if delivered personally, by facsimile (FAX), or enclosed in a properly addressed certified postage prepaid envelope with return receipt requested deposited in a United State Post Office or by Federal Express or equivalent delivery system. Unless or until formally notified otherwise, notices to the Parties shall be addressed as follows:

Regional Resources Manager
U. S. Bureau of Reclamation, MP-400
2800 Cottage Way
Sacramento, CA 95825-1898

Regional Manager
Department of Fish and Game
Central Coast Region
Yountville, CA 94599

Chief, Division of Environmental Services
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Executive Director
Suisun Resource Conservation
District
2544 Grizzly Island Road
Suisun, CA 94585

Chief, Central Valley Bay-Delta
Branch
Department of Fish and Game
4001 North Wilson Way
Stockton, CA 95205

Article VII. Term of the Agreement

This Revised Mitigation Agreement shall become effective upon execution by the Parties, and execution of the Revised SMPA (referenced in Article I) and the Revised Monitoring Agreement and approval of the California Department of General Services of this Revised Mitigation Agreement, the Revised SMPA, and Revised Monitoring Agreement. This Revised Mitigation Agreement shall remain in full force and effect until terminated by written agreement of all the Parties.

Article VIII. Public Access

Lands owned or to be acquired in fee title by the State, which are used as mitigation lands under this Revised Mitigation Agreement, may be accessible to the public for recreation use. With the exception of lands under DFG ownership and management, USBR and DWR shall mutually determine after consultation with DFG and SRCD the extent to which such lands should be used for recreation consistent with safety, operational needs and potential damage to other lands.

Article IX. Dispute Resolution and Remedies

- A. Disagreement among the Parties regarding performance under this Revised Mitigation Agreement shall first be presented to the SMPA Coordination Committee as provided in Article XII of the Revised SMPA, and if unresolved, then be brought before the agency directors and the SRCD Board of Directors for discussion and possible resolution.
- B. As a condition precedent to a Party or Parties bringing any suit for breach of this Revised Mitigation Agreement, that Party or Parties must first notify the other Party or Parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation 90 days in advance. If the Parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the Parties. The Parties involved in the dispute shall each pay an equal proportion of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the Parties from performance pursuant to this Revised Mitigation Agreement.
- C. Neither DWR nor USBR is responsible for the other's obligation under this Revised Mitigation Agreement.
- D. The terms of Article XIV (Release of Liability) shall be interpreted consistent with, and not supplant, the terms of this Article.

Article X. Opinions and Determinations

Where the terms of this Revised Mitigation Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination by the Parties, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious or unreasonable.

Article XI. Successors and Assigns Obligated

This Revised Mitigation Agreement and all of its provisions shall apply to and bind the successors and assigns of the Parties hereto. No assignment is valid without the written consent of all the Parties.

Article XII. Books, Records, Reports and Inspections

Subject to the applicable federal and State laws and regulations, each party shall have the right, for a period of three years after final payment under this Revised Mitigation Agreement, to examine and make copies of each others books and official records relating to matters covered by this Revised Mitigation Agreement and to request entry onto property or facilities for inspections.

Article XIII. Waiver of Rights

Waiver at any time by any Party hereto of its rights with respect to a default, or any other matter arising in connection with this Revised Mitigation Agreement, shall not be deemed to be a waiver with respect to any other default or matter.

Article XIV. Release of Liability

- A. SRCD, and its agents and employees, in the performance of this Revised Mitigation Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California or the federal government.
- B. Disagreements among the Parties regarding performance under this Revised Mitigation Agreement shall be governed exclusively by Article IX.
- C. Each Party shall be responsible for the consequences of its own actions taken in connection with this Revised Mitigation Agreement, and in connection with any work undertaken in accordance with this Revised Mitigation Agreement. Within thirty days of receipt by any Party to this Revised Mitigation Agreement of any third party claim for liability arising from actions or omissions within the scope of this Revised

Mitigation Agreement, the Party receiving the claim shall notify each of the other Parties to this Revised Mitigation Agreement of such claim and provide a copy of the claim to each of the other Parties to this Revised Mitigation Agreement, if it is in written form. Nothing in this Article shall be construed to limit the right of any Party to this Revised Mitigation Agreement to assert such affirmative defenses and file such cross-complaints as may be appropriate in relation to any claim affecting the liability of such Party to this Revised Mitigation Agreement.

Article XV. Contingent Upon Availability of Funds

- A. Forty percent of the total funds to be paid under this Revised Mitigation Agreement shall be paid using State Water Project funds and twenty percent of the total funds to be paid under this Revised Mitigation Agreement are contingent on the appropriation of other State funds.
- B. The expenditure or advance of any money and the performance of any work by the United States or the State of California under this Revised Mitigation Agreement which may require appropriation of money by the Congress or the State Legislature, respectfully, or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States or the State of California in case such funds are not appropriated or allotted.

Article XVI. Standard Clauses

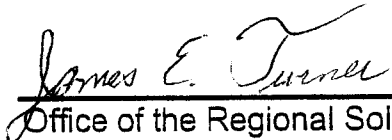
The Parties shall comply with the applicable standard clauses in Exhibits C, C1, D, D1, E, and F, however, where a standard clause conflicts or is inconsistent with any provision of this Revised Mitigation Agreement (also referred to as Exhibit A), the provisions of this Revised Mitigation Agreement shall control. And, specifically, Conditions 5 and 7 of Exhibit C shall not be applicable as these conditions are inconsistent with Articles XIV and VII of this Revised Mitigation Agreement, respectively.

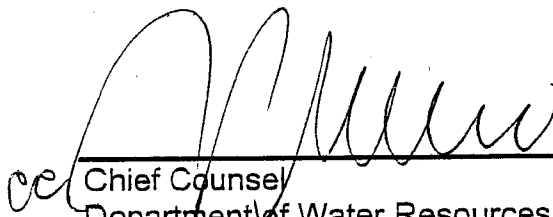
Article XVII. Counterparts

This Agreement may be executed simultaneously or in one or more counterparts, each of which will be an original but all of which together will constitute one and the same document.

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised Mitigation Agreement (also referred to as Exhibit A) on the date first written above. The terms of this Revised Mitigation Agreement together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

Approved as to legal form and
sufficiency:

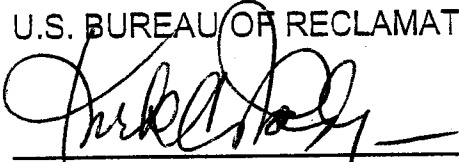

Office of the Regional Solicitor
Department of the Interior


Chief Counsel
Department of Water Resources

Chief Counsel
Department of Fish and Game

Counsel
Suisun Resource Conservation District

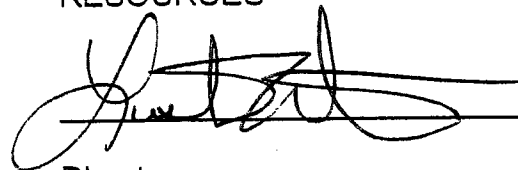
U.S. BUREAU OF RECLAMATION


Regional Director, Mid-Pacific Region

MAY 23 2005

Date

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES


Director

Date

DEPARTMENT OF FISH AND GAME

Director

Date

SUISUN RESOURCE
CONSERVATION DISTRICT

President, Board of Directors,

Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised Mitigation Agreement (also referred to as Exhibit A) on the date first written above. The terms of this Revised Mitigation Agreement together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

Approved as to legal form and
sufficiency:

U.S. BUREAU OF RECLAMATION

Regional Director, Mid-Pacific Region

Office of the Regional Solicitor
Department of the Interior

Date


cc Chief Counsel
Department of Water Resources

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES


Director

Chief Counsel
Department of Fish and Game

Date

DEPARTMENT OF FISH AND GAME

Counsel
Suisun Resource Conservation District


Director


Date

SUISUN RESOURCE
CONSERVATION DISTRICT

President, Board of Directors,

Date

IN WITNESS WHEREOF, the Parties hereto have entered into this Revised Mitigation Agreement (also referred to as Exhibit A) on the date first written above. The terms of this Revised Mitigation Agreement together with the cover page and Exhibits B, C, C1, D, D1, E and F constitute the whole agreement among the Parties.

Approved as to legal form and
sufficiency:

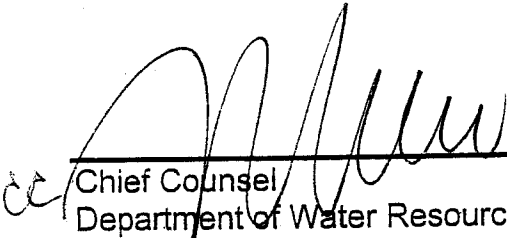
U.S. BUREAU OF RECLAMATION

Office of the Regional Solicitor
Department of the Interior

Regional Director, Mid-Pacific Region

Date

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES



Chief Counsel
Department of Water Resources


Director

Chief Counsel
Department of Fish and Game

Date

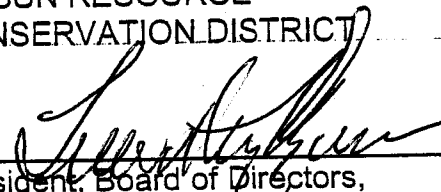
DEPARTMENT OF FISH AND GAME


Counsel
Suisun Resource Conservation District

Director

Date

SUISUN RESOURCE
CONSERVATION DISTRICT


President, Board of Directors,


Date

ATTACHMENT A
ORIGINAL SUISUN MARSH MITIGATION AGREEMENT

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SUISUN MARSH MITIGATION AGREEMENT
Among
The Department of Water Resources
The Department of Fish and Game
and
The United States Bureau of Reclamation

THIS Agreement dated this 2nd day of March, 1987, is hereby entered into among the California Department of Water Resources (DWR) and the California Department of Fish and Game (DFG) and the United States Bureau of Reclamation (USBR).

RECITALS

Waterfowl habitat in the Suisun Marsh will be (1) lost due to the construction of facilities in accordance with the Suisun Marsh Preservation Agreement among DWR, USBR, DFG and Suisun Resource Conservation District (SRCD) dated March 2, 1987 (SMPA), and (2) degraded by the impacts of the Central Valley Project (CVP), the State Water Project (SWP), and other upstream diverters on the Channel Islands (Roe, Ryer, Freeman and Snag). The parties hereto are willing to provide for the acquisition, development, operation and maintenance of mitigation lands in accordance with the terms and conditions set forth below to offset such losses and degradation.

AGREEMENT

1. Definitions -- When used herein, the term:

"Mitigation Lands" shall mean those lands that are to be acquired, developed, operated and maintained by DFG to offset loss and degradation of waterfowl habitat resulting from the construction of facilities in accordance with the SMPA and impacts of the CVP, the SWP, and other upstream diverters on the Channel Islands.

2. Mitigation Lands and Funding -- Table 1 below lists the acreage and estimated costs of mitigation lands which may be necessary. If the facilities constructed or to be constructed in accordance with the SMPA are changed, the acreage and costs set forth in Table 1 shall be adjusted, if necessary, by mutual agreement of the parties.

Table 1

Phases of Acquisition and Development	Mitiga- tion Lands (Acres)	Estimated Costs of Mitigation Lands (July 1985 dollars)	
		Acquisition & Development ^{1/} (x \$1000)	Operation & Maintenance ^{2/} (x \$1000)
<u>Phase A</u>			
Initial Facilities (Roaring River Unit, Morrow Island Ditch, and Goodyear Slough Outfall) Montezuma Slough Control Structure One-half Channel Islands	354	2478	885
<u>Phase B</u>			
Boynton-Cordelia Unit	47	329	118
Cordelia-Goodyear Unit	44	308	110
Grizzly Island Unit	172	1204	430
Protrero Hills Unit	49	343	122
<u>Phase C</u>			
Other one-half of Channel Islands	227	1589	568
TOTAL	893	6251	2233

1/ Acquisition and Development costs are based on \$7000 per acre.

2/ Operation and Maintenance costs are based on \$2500 per acre.

3. Phases of Acquisition, Development, Operation, and Maintenance of Mitigation Lands --

- (a) Prior to commencement of construction of the Montezuma Slough Control Structure, DWR shall pay to DFG the total estimated costs of mitigation lands set forth in Table 1 for Phase A. One hundred (100) acres of the land acquired with such funds shall be developed, operated and maintained for habitat for the salt marsh harvest mouse to comply with the Section 7 determination of the U.S. Fish and Wildlife Service, dated December 7, 1981.
- (b) Prior to commencement of construction of each unit identified in Phase B of Table 1, DWR shall pay to DFG

the total estimated cost of mitigation lands for such unit set forth in Table 1, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in costs. Acquisition and Development costs will be adjusted using applicable "Engineering News Record" cost indexes, and Operation and Maintenance costs will be adjusted using USBR's "Water Systems Operation and Maintenance Cost Trends".

- (c) DWR shall pay to DFG the amounts specified in Phase C of Table 1 on December 31, 1997, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in costs. Acquisition and Development costs will be adjusted using applicable "Engineering News Record" cost indexes, and Operation and Maintenance costs will be adjusted using USBR's "Water Systems Operation and Maintenance Cost Trends".
- (d) USBR and DWR may jointly approve DFG acquisition of mitigation lands in variance with Table 1, subject to such terms and conditions as are mutually agreeable to the parties.

4. Miscellaneous Provisions --

- (a) DFG shall develop and submit to USBR, DWR, and SRCD plans for the acquisition, development, operation, and maintenance of mitigation lands. USBR, DWR, and SRCD shall review and comment on such plans within 30 days of the date of submittal.
- (b) DFG shall acquire, develop, operate, and maintain mitigation lands as cost effectively as possible. In its discretion, DFG may develop, operate, and maintain lands which it already owns as mitigation lands, provided that in such cases the Acquisition and Development costs in Table 1 shall be reduced by \$2000 per acre to exclude acquisition costs.
- (c) To the extent feasible, DFG shall make the mitigation lands available to the public for recreational purposes, including hunting, nature study and photography.
- (d) USBR and DWR shall be responsible exclusively for the funding specified in Article 5 of this Agreement. USBR and DWR shall not be responsible in any other manner for the acquisition, development, operation and maintenance of the mitigation lands by DFG.

5. Cost Sharing and Payment --

- (a) USBR shall pay forty percent (40%) and DWR shall pay sixty percent (60%) of the costs incurred by DWR to

implement this Agreement. Such costs shall not exceed a total of \$9 million, July 1985 dollars, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction cost indexes applicable to the type of construction involved herein. USBR's share of such costs shall be paid exclusively from funds made available to USBR to implement subarticle 12(a) of the SMPA.

- (b) All costs incurred to continue to implement this Agreement after 50 years from the effective date hereof shall be the sole responsibility of DFG.
- (c) The term "costs" shall include all administrative overhead, costs of liability insurance or pooling programs and other costs similar to those normally incurred by USBR which will be incurred by DWR in performance of the obligations under this Agreement.
- (d) The United States shall pay to DWR the costs determined to be allowable by the Contracting Officer in accordance with the terms of this Agreement and with provisions of Federal Acquisition Regulations (FAR), Part 31, Subpart 31.6, 48 CFS Sections 31.601-31.603. If DWR uses any funds advanced pursuant to this Agreement for purposes not in accordance with this Agreement or not in compliance with FAR Part 31, Subpart 31.6, DWR shall reimburse USBR for the amount of any such improperly used funds.
 - (i) The USBR's share of costs incurred by DWR prior to the date of this Agreement plus the interest from the dates such costs were incurred, at the State Surplus Money Investment Fund rates, shall be paid in a lump sum payment following an audit of such costs by an authorized representative of the USBR, to be completed within six months after execution of this Agreement.
 - (ii) Prior to the dates on which DWR is to pay DFG in accordance with subarticles 3(a), 3(b), and 3(c), of this Agreement, USBR shall advance its contributions specified in this Article, in accordance with a billing statement furnished by DWR specifying the payments to be made.
- (e) Each year on or before September 15, DWR shall furnish to USBR a proposed budget of the estimated costs to be incurred to implement this Agreement during the fiscal year beginning a year later on October 1, and the respective contributions of the parties. USBR shall notify DWR by the following September 15 of its full or partial approval of DWR's proposed budget. USBR's

approval shall not be unreasonably withheld. In the event that USBR does not approve all budgeted costs, such unapproved costs shall not be eligible for reimbursement by USBR until such time as they are mutually agreed upon by DWR and USBR. To facilitate USBR's review, each year's proposed budget should include a narrative description which adequately describes and explains all major aspects of the fiscal year's proposed program.

- (f) Separate cost accounts shall be maintained by physical feature or descriptive title to permit ready audit.

6. Contingent on Availability of Funds --

The expenditure or advance of any money or the performance of any work by the United States hereunder which may require appropriation of money by the Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made. No liability shall accrue to the United States in case such funds are not appropriated or allotted.

7. Notices --

All notices that are required to be given by one party to another shall be deemed to be given if delivered personally or if enclosed in a properly addressed, certified, postage prepaid envelope with return receipt requested, and deposited in a United States Post Office. Unless or until formally notified otherwise, the parties shall address all notices as follows:

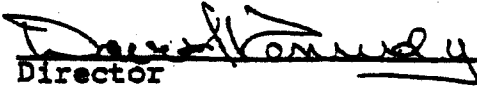
Director, Department of Water Resources
P. O. Box 388
Sacramento, CA 95802

Director, Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Regional Director, Mid-Pacific Region
U. S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

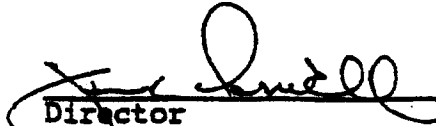
The provisions of this Agreement will be binding upon the parties upon their signature.

IN WITNESS WHEREOF, the parties hereto have executed this contract
on the date first written above.




Director
California Department of
Water Resources

Date: 3/2/87



Director
California Department of
Fish and Game

Date: MARCH 2/1987



Director
Mid-Pacific Region United States
Bureau of Reclamation

Date: 3/2/87

IN WITNESS WHEREOF, the parties hereto have executed this contract
on the date first written above.

David K. Kinsley
Director
California Department of
Water Resources

Date: 3/2/87

David L. Houston
Director
Mid-Pacific Region United States
Bureau of Reclamation

Date: 3/2/87

Jim Dineen
Director
California Department of
Fish and Game

Date: 3/2/87

FORM	POLICY	EXEMPT
Department of Fish and Game		
AFFIDAVIT		
OCT 2 1987		
By		

I hereby certify that all conditions for exemption
set forth in State Administrative Manual Section
1232 have been complied with and this document
is exempt from review by the Department of Finance.

Jim Dineen

Disbursement from WRPF SOC WC-135 Fund Item 902 Ch. 6

Reimbursement from CVWPCF Fund Item 500 Ch. 500 Code 500

Y.	ACCOUNT NO.	ORIG. NO.	EXP. CODE	BUDGET ITEM NO.	ENCUMBRANCE AMOUNT	UNENC. BAL.
38	1383	0439	6502	231	\$2,500,000.00	Pending availability
39	1383	0439	6502	231	\$ 900,000.00	of funds

I hereby certify upon my own personal knowledge that the
unencumbered balance of the departmental budget provision for the
period stated above is correct.

(After T.R.A. No. _____ or R.R. No. _____)

DWR 627 (REV. 4-82) FUNDING STRIP

B-56321

Angela L. Loh 7-29-87
SIGNATURE OF ACCOUNTING OFFICER DATE
STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

DS 60346

CONTRACT TRANSFERRING CONTRACT		DEPARTMENT TRANSFERRING CONTRACT	
STD 15 (REV. 2/86)		Water Resources	
AGENCY BILLING CODE		DIVISION, BUREAU, OR OTHER UNIT	
81000		Central District	
DATE		CONTRACT NUMBER	
3/2/87		B-56321	

ITEMS 1 THROUGH 11 ON THE FRONT SIDE OF THIS FORM MUST BE COMPLETED FOR EVERY CONTRACT, REGARDLESS OF CONTRACT AMOUNT OR WHETHER THE CONTRACT MUST BE SUBMITTED TO THE DEPARTMENT OF GENERAL SERVICES FOR REVIEW. IN ADDITION, ITEMS 1 THROUGH 6 ON THE REVERSE SIDE MUST BE COMPLETED FOR ALL CONTRACTS FOR SERVICES. A COPY OF THE COMPLETED FORM MUST ACCOMPANY EACH CONTRACT SUBMITTED TO GENERAL SERVICES FOR REVIEW. A COPY OF THE COMPLETED FORM MUST BE RETAINED IN AGENCY FILES FOR 3 YEARS FROM DATE CONTRACT WAS EXECUTED.

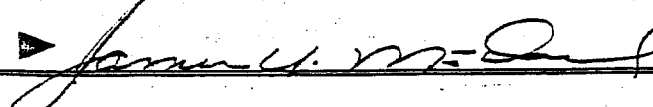
1. NAME OF CONTRACTOR		2. CONTRACTOR I.D. NUMBER (IF REQUIRED BY S.A.M. SECTION 1248.1)	
U.S. Bureau of Reclamation, Department of Fish and Game, Department of Water Resources		NA	
3. DIGEST OF CONTRACT (WORK TO BE PERFORMED, AMOUNT TO BE PAID, TERM). INCLUDE ANY SPECIAL OR UNUSUAL TERMS AND CONDITIONS.			
<p>DFG will acquire, develop, and maintain the mitigation lands.</p> <p>Agreement amount - Article 3(a) requires DWR and USBR provide approximately \$3,400,000 to DFG for Phase A. This will be provided in two installments: FY 1987-88, \$2,500,000; and FY 1988-89, \$900,000. Further funding will be provided when subsequent phases are implemented.</p> <p>USBR will reimburse DWR 40% of the total costs.</p> <p>Agreement term - until terminated by the written agreement of all parties.</p>			

4. REASON FOR CONTRACT (IDENTIFY SPECIFIC PROBLEM, ADMINISTRATIVE REQUIREMENT, PROGRAM NEED OR OTHER CIRCUMSTANCE MAKING THE CONTRACT NECESSARY)	
<p>To mitigate for wetlands lost because of facilities to be constructed in accordance with the Suisun Marsh Preservation Agreement and due to the impact of the Central Valley Project and the State Water Project on the Channel Islands. Also see B-56322 and B-56323.</p>	

5. IS THIS A RENEWAL OF A PREVIOUS CONTRACT OR SERVICE?		YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
6. SUMMARY OF BIDS:			
A. LIST BIDDERS AND AMOUNTS BID			
B. EXPLAIN:			
1. AWARD OF CONTRACT IF TO OTHER THAN LOW BIDDER			
2. IF SOLE SOURCE WHAT IS JUSTIFICATION?			
3. IF ONLY ONE BID WAS RECEIVED OR SOLE SOURCE, BASIS FOR CONCLUDING REASONABLENESS OF CONTRACT RATE OR PRICE			

Work Order No.: 1383-0439-6502; Carol Nelson

Project Manager: George Barnes

ETHNIC CODES:		MALE	FEMALE	MALE	FEMALE
BLACK AMERICANS		1	A	AMERICAN INDIANS/ALASKAN NATIVES	7
ASIAN-PACIFIC AMERICANS		2	B	FILIPINO AMERICANS	8
HISPANIC AMERICANS		3	C	ASIAN-INDIAN AMERICANS	9
PACIFIC ISLANDERS		4	D	CAUCASIAN/WHITE	5
		5	E		
(FOR ASSISTANCE WITH ITEMS 7 AND 8 BELOW, CALL THE OFFICE OF SMALL AND MINORITY BUSINESS IN THE DEPARTMENT OF GENERAL SERVICES.)					
7. ENTER ETHNICITY OF CONTRACTOR FROM LIST ABOVE AS DEFINED IN S.A.M. SECTION 1204.4			8. WAS THIS CONTRACT AWARDED TO A SMALL BUSINESS AS DEFINED IN S.A.M. SECTION 1204.17		
NA			<input type="checkbox"/> YES <input type="checkbox"/> NO NA		
9. HAS THE LETTING OF THIS CONTRACT BEEN REPORTED TO THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PURSUANT TO S.A.M. SECTION 1212.117			<input type="checkbox"/> YES <input type="checkbox"/> NO NA		
10. AUTHORIZED SIGNATURE			11. NAME AND TITLE		
			James U. McDaniel, Chief, Central District		

PRE-EVALUATION SECTION—MUST BE COMPLETED WHEN REQUESTING APPROVAL OF ANY CONTRACT FOR SERVICE

1. JUSTIFICATION FOR CONTRACT (CHECK ONE)

- ☐ THIS CONTRACT IS TO BE EXECUTED TO ACHIEVE COST SAVINGS PURSUANT TO S.A.M. SECTION 1230.1. THE STATE PERSONNEL BOARD HAS BEEN SO NOTIFIED
- ☐ THIS CONTRACT IS TO BE EXECUTED PURSUANT TO CIVIL SERVICE CONSIDERATIONS CONTAINED IN S.A.M. SECTION 1: JUSTIFICATION FOR THE CONTRACT IS DESCRIBED BELOW

NA

2. DESCRIBE THE SERVICE OR FINAL PRODUCT WHICH WILL RESULT, ITS BENEFIT AND THE ESTIMATED NUMBER OF PERSONS SERVED BY SUCH BENEFIT

NA

3. HOW WILL THE AGENCY USE THE CONTRACT PRODUCT? HOW WILL ITS USE BENEFIT THE AGENCY'S PROGRAM?

NA

4. WHY IS CONTRACTING THE MOST EFFECTIVE METHOD OF ACHIEVING THE AGENCY'S PURPOSE?

NA

5. WHAT BIDDING METHOD WAS USED TO SELECT THE VENDOR?

- ☐ REQUEST FOR PROPOSAL ☐ INVITATION FOR BID ☐ OTHER, EXPLAIN—USE ATTACHMENTS IF NECESSARY NA

PROOF OF PUBLICATION IN THE STATE CONTRACTS REGISTER MUST BE ATTACHED. IF SUCH PROOF IS NOT AVAILABLE, A REQUEST FOR EXEMPTION FROM CONTRACT ADVERTISING, STD. FORM 821 MUST BE ATTACHED. (SEE S.A.M. SECTION 1212.6)

6. DOCUMENT EFFORTS MADE TO DETERMINE WHY PERSONNEL IN YOUR AGENCY OR IN OTHER STATE AGENCIES CANNOT PROVIDE THIS WORK. LIST WHICH SERVICE CLASSES WERE CONSIDERED, NAMES OF AGENCIES CONTACTED, AND EXPLAIN WHY THEY CANNOT PROVIDE THE REQUESTED SERVICES.

NA

7. HAVE ALL REQUIREMENTS GOVERNING THE USE OF CURRENT AND FORMER STATE EMPLOYEES AS SPECIFIED IN S.A.M. SECTION 1248 BEEN COMPLIED WITH?

- ☐ YES ☐ NO NA

EXHIBIT B

BUDGET DETAIL AND PAYMENT PROVISIONS

1. **INVOICING AND PAYMENT:** Contractor shall submit three (3) copies of the invoice to the State only after receiving verbal notice of satisfactory completion or acceptance of work by the DWR Contract Manager. **The State will not accept an invoice for which work has not been approved and will return the invoice as a disputed invoice to the Contractor.**

Invoices shall be submitted no more than **monthly**, in arrears, bearing the contract number.

Submit two (2) copies of each invoice to the Contract Manager at the following address:

**Department of Water Resources
Division of Environmental Services
Attention: SMPA Contract Manager
3251 "S" Street
Sacramento, CA 95816**

Submit one (1) additional copy of each invoice simultaneously to the DWR Accounting Office at the following address in order to expedite approval and payment:

**DWR Accounting Office, Contracts Payable Unit
P.O. Box 942836
Sacramento, California 94236-0001**

Undisputed invoices shall be approved for payment within 45 days of the date received by the Contract Manager and/or the Accounting Office, whichever date occurs later.

2. **BUDGET CONTINGENCY CLAUSE:** It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement Amendment to Contractor to reflect the reduced amount.

EXHIBIT C
GENERAL TERMS AND CONDITIONS GTC-304
APPLICABLE TO SRCD

GTC 304

EXHIBIT C
Applicable to SRCD

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 304 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with, that:

a). The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b) The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.”

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. UNION ACTIVITIES For all contracts, except fixed price contracts of \$50,000 or less, the Contractor acknowledges that:

By signing this agreement Contractor hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement and agrees to the following:

- a) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- c) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- d) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

S:\ADMIN\homepage gtc 304 kay.doc

EXHIBIT C1

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO SRCD AS A LOCAL PUBLIC ENTITY (PAYABLES)

Exhibit C1
Special Terms and Conditions for Department of Water Resources
Applicable to SRCD as a Local Public Entity (Payables)

1. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
2. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. EQUIPMENT RENTAL AGREEMENTS: This provision shall apply to equipment rental agreements. The State shall not be responsible for loss or damage to the rented equipment arising from causes beyond the control of the State. The State's responsibility for repairs and liability for damage or loss to such equipment is restricted to that made necessary or resulting from the negligent act or omission of the State or its officers, employees, or agents.
4. CONFLICT OF INTEREST:
 - a. Current and Former State Employees: Contractor should be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) Current State Employees: (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) Former State Employees: (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment,

no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

- (a) If the Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

- (a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

Contractor should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), the Contractor and any subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

5. PAYMENT RETENTION CLAUSE: Ten percent of any progress payments that may be provided for under this contract shall be withheld per Public Contract Code Sections 10346 and 10379 pending satisfactory completion of all services under the contract.
6. RENEWAL OF CCC: Contractor shall renew the Contractor Certification Clauses or successor documents every (3) years or as changes occur, whichever occurs sooner.
7. AGENCY LIABILITY: The Contractor warrants by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage,

or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the State shall, in addition to other remedies provided by law, have the right to annul this Agreement without liability, paying only for the value of the work actually performed, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

8. POTENTIAL SUBCONTRACTORS: Nothing contained in this Agreement or otherwise shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of its responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any moneys to any subcontractor.
9. REPORT RECYCLED CONTENT CERTIFICATION: In accordance with Public Contract Code Sections 10233, 10308.5 and 10354, the contractor must complete and return the form DWR 74, Recycled Content Certification, for each required product to the Department at the conclusion of services specified in this contract. Form DWR 74 is attached to this Exhibit and made part of this contract by this reference.
10. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations. Contractor's designated headquarters for the purpose of computing such expenses shall be: [REDACTED].

EXHIBIT D

**SPECIAL TERMS AND CONDITIONS FOR INTERAGENCY
AGREEMENTS**

APPLICABLE TO DFG AND DWR

Exhibit D

GIA101 – General Terms and conditions for Interagency Agreements

Applicable to DFG and DWR

1. APPROVAL: This Agreement is not valid until signed by both parties and approved by the Department of General Services, if required.
2. AUDIT: The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated.
3. PAYMENT: Costs for this Agreement shall be computed in accordance with State Administrative Manual Section 8752 and 8752.1.
4. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or agreement not incorporated in the Agreement is binding on any of the parties.
5. SUBCONTRACTING: All subcontracting must comply with the requirements of the State Contracting Manual, Section 3.06.
6. ADVANCE PAYMENT: The parties to this interagency agreement may agree to the advancing of funds as provided in Government Code Sections 11257 through 11263.
7. DISPUTES: The agency performing work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.
8. TIMELINESS: Time is of the essence in this Agreement.

EXHIBIT D1

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO DFG AND DWR

Exhibit D1
Special Terms and Conditions for Department of Water Resources
Applicable to DFG and DWR

1. COMPUTER SOFTWARE: For contracts in which software usage is an essential element of performance under this Agreement, the Department of Fish and Game (DFG) and Department of Water Resources (DWR) certify that they have appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.
2. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.
3. CONFLICT OF INTEREST:
 - a. Current and Former State Employees: DFG and DWR should be aware of the following provisions regarding current or former state employees. If DFG or DWR have any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.
 - (1) Current State Employees: (PCC §10410)
 - (a) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - (b) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
 - (2) Former State Employees: (PCC §10411)
 - (a) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
 - (b) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

b. Penalty for Violation:

(a) If DFG or DWR violate any provisions of above paragraphs, such action shall render this Agreement void. (PCC §10420)

c. Members of Boards and Commissions:

(a) Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC §10430 (e))

d. Financial Interest in Contracts:

DFG and DWR should also be aware of the following provisions of Government Code §1090:

"Members of the Legislature, state, county district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity."

e. Prohibition for Consulting Services Contracts:

For consulting services contracts (see PCC §10335.5), DFG or DWR and any of their subcontractors (except for subcontractors who provide services amounting to 10 percent or less of the contract price) may not submit a bid/SOQ, or be awarded a contract, for the provision of services, procurement of goods or supplies or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of such a consulting services contract (see PCC §10365.5).

EXHIBIT E

**SPECIAL TERMS AND CONDITIONS FOR DEPARTMENT OF
WATER RESOURCES**

APPLICABLE TO THE U.S. BUREAU OF RECLAMATION

Exhibit E
Special Terms and Conditions for Department of Water Resources
Applicable to the U.S. Bureau of Reclamation

1. OFFICIALS NOT TO BENEFIT: No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this agreement if made with a corporation for its general benefit.

2. NONDISCRIMINATION CLAUSE: During the performance of this Agreement, U.S. Bureau of Reclamation (USBR) and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. USBR and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. USBR and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

USBR shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. This provision shall apply to the extent provided by federal laws, rules, and regulations.

3. INDEPENDENT CONTRACTOR: The USBR, and its agents and employees, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

4. SEVERABILITY: If any provision of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be constructed to remain fully valid, enforceable, and binding on the parties.

5. TIMELINESS: Time is of the essence in this Agreement.

6. SOFTWARE COPYRIGHT: For contracts in which software usage is an essential element of performance under this Agreement, the USBR certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of applicable copyright laws.

EXHIBIT F

**DEPARTMENT OF WATER RESOURCES STANDARD
CONTRACT PROVISIONS REGARDING POLITICAL REFORM
ACT COMPLIANCE**

APPLICABLE TO DFG AND SRCD

California Department of Water Resources

**Standard Contract Provisions Regarding
Political Reform Act Compliance**1. POLITICAL REFORM ACT REQUIREMENTS:

- a. Form 700 Disclosure: The Department of Water Resources (DWR) considers that the Contractor, subcontractor(s), and/or their key staff may be a consultant, i.e., a public official, within the meaning of the Political Reform Act, specifically Government Code §82048 and Title 2, California Code of Regulations §18701. Accordingly, as specified by DWR, such persons shall complete and submit to the DWR Personnel Officer a Form 700, Statement of Economic Interests, within 30 days of the earlier of the date work commences or the effective date of this agreement, updated both annually and when changes in key staff or duties occur. The financial interests disclosed shall be for Disclosure Category 1. Contractors may access the Form 700 on the Fair Political Practices Commission website at www.fppc.ca.gov. Any questions regarding completion of the Form 700 should be addressed to the FPPC at its website or at (866) 275-3772 (866/ASK-FPPC). A leaving office statement must also be filed upon completion of all contract assignments.
- b. Financial Conflict of Interest Prohibition: Contractor must review the Form 700s filed by its key staff and subcontractors and determine whether, in the light of the interests disclosed, performance under the contract could violate Government Code §87100. Contractor shall notify DWR immediately of any potentially disqualifying conflict of interest. Government Code §87100 provides:

“No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”
- c. Consequences of Failure to Comply with Political Reform Act Requirements: Any one of the following shall constitute a breach of this Contract and shall be grounds for immediate termination of this Contract:
 - (1) Failure to complete and submit all required Form 700s within the 30-day period as required in paragraph A above, or respond to any request from the DWR Personnel Officer for additional information regarding any such Form 700s;

- (2) Failure to notify DWR of a potentially disqualifying conflict of interest;
- (3) The determination by DWR or the Contractor that any individual, who is a contractor, subcontractor, and/or a key member of their staff, has a financial interest that could result in a violation of Government Code §87100 provided, however, that DWR may opt to waive such breach if Contractor replaces any such individual within two working days after a determination of such financial interest.